A

TEOH CHU THONG

v.

ANANTHA KIRUISAN PSR & ANOR

B

COURT OF APPEAL, PUTRAJAYA
GOPAL SRI RAM JCA
SURIYADI HALIM OMAR JCA
HASAN LAH JCA
[CIVIL APPEAL NO: W-04-197-2004]

C

5 DECEMBER 2007

ROAD TRAFFIC: *Negligence - Collision between motor cycle and taxi - Appeal from High Court that reversed sessions court's decision on finding of fact - Sessions court found that defendant taxi driver must have*

D

pulled up to pick up a passenger from kerb thereby causing accident - High Court held no evidence that such person was on kerb - Whether High Court erred in interfering with sessions court's finding of fact

CIVIL PROCEDURE: *Appeal - Appeal to Court of Appeal from High Court - Case originated in sessions court - Whether further appeal*

E

lies to Federal Court - Courts of Judicature Act 1964, s. 96

The sessions court found the defendant solely liable in a road accident case in favour of the plaintiff. The High Court reversed the decision in favour of the defendant. The plaintiff now

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appealed, the main issue being whether the High Court was correct in interfering with the sessions court's finding of pure fact based on evidential credibility. The plaintiff's case at first instance was that he was riding his motor cycle along the road when the defendant taxi driver overtook him and suddenly obstructed his

G

path, as a result of which he collided into the rear of the taxi. The defendant claimed that he was proceeding along the same road when the plaintiff collided into the rear of his taxi. The sessions court thought it likely that the defendant pulled up to pick up a passenger from the kerb and that must have accounted

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for what had happened. The High Court held that there was no evidence that there was such a person on the kerb.

I

Held (allowing the appeal)
Per Gopal Sri Ram JCA delivering the judgment of the court:

(1) There was nothing improbable in the plaintiff's story when he said that the defendant taxi had overtaken him and obstructed his path. It was a common occurrence in Kuala Lumpur for a taxi to suddenly pull up the kerb for the purpose of either picking up a passenger or dropping one off. So the sessions court was clearly entitled to suggest that probable cause for what had happened. The ring of truth or falsity in the evidence of the witnesses who gave evidence before the sessions court would have been more audible to that court than to the High Court on appeal. In conclusion, the High Court had erred in interfering with the sessions court's findings. (paras 3 & 6)

Obiter

(1) In cases of this sort, the Court of Appeal, as a general rule, does not produce written decisions for its decision. Firstly, because this kind of cases merely turn on an assessment of facts; they do not involve any novel or important principle of law. Secondly, because in matters that originate in a subordinate court, the Court of Appeal is the final arbiter and no further appeal lies to the Federal Court. (See s. 94 of the Courts of Judicature Act 1964). In the present case, the High Court exercised its appellate and not its original jurisdiction. As such, on a reading of the plain words of the statute, the Federal Court has no jurisdiction over this case. Yet, the defendant appeared to have moved that court. (para 1)

Bahasa Malaysia *Translation Of Headnotes*

Mahkamah sesyen, dengan memihak kepada plaintif, mendapati defendan bertanggungan sepenuhnya terhadap satu kemalangan jalanraya. Mahkamah Tinggi mengakas keputusan tersebut sekaligus membuat keputusan yang berpihak kepada defendan. Plaintif merayu dan isu penting yang berbangkit adalah sama ada Mahkamah Tinggi betul dalam mengganggui dapatan mahkamah sesyen semata-mata atas soal fakta dan berasaskan kebolehpercayaan keterangan. Di mahkamah bicara, kes plaintif adalah bahawa beliau sedang menunggang motorsikalnya di jalanraya bilamana teksi

defendan memotongnya dan menghalang laluannya sekaligus menyebabkan beliau terlanggar bahagian belakang teksi. Defendan bagaimanapun mendakwa bahawa beliau sedang melalui jalan dari arah yang sama apabila plaintif melanggar belakang teksinya. Mahkamah sesyen berpendapat adalah mungkin bahawa defendan telah memberhentikan teksinya di bahu jalan bagi mengambil penumpang sekaligus menyebabkan perlanggaran berlaku. Mahkamah Tinggi bagaimanapun berkata bahawa tiada keterangan yang menunjukkan bahawa ada orang di bahu jalan tersebut.

Diputuskan (membenarkan rayuan)
Oleh Gopal Sri Ram HMR menyampaikan penghakiman mahkamah:

(1) Tidak ada yang tidak munasabah dengan cerita plaintif apabila beliau berkata bahawa teksi telah memotongnya dan menghalang laluannya. Adalah satu kejadian yang biasa di Kuala Lumpur bagi sebuah teksi untuk berhenti di bahu jalan dengan tiba-tiba bagi maksud mengambil atau menurunkan penumpang. Oleh itu mahkamah sesyen berhak untuk berpendapat bahawa kemungkinan itulah penyebabnya kepada apa yang berlaku. Kebenaran atau kepalsuan keterangan yang diberikan oleh saksi-saksi di hadapan mahkamah sesyen lebih dapat difahami oleh mahkamah tersebut berbanding dengan Mahkamah Tinggi di peringkat rayuan. Mahkamah Tinggi dengan itu khilaf bilamana mengganggui dapatan-dapatan mahkamah sesyen.

Obiter:

(1) Dalam kes-kes seperti ini, Mahkamah Rayuan, sebagai satu kaedah am, tidak akan mengeluarkan penghakiman bertulis bagi keputusannya. Pertama kerana kes-kes seperti ini hanya berkisar di sekitar penilaian fakta-fakta dan tidak melibatkan sebarang prinsip undang-undang penting atau baru. Keduanya kerana, dalam hal-hal yang bermula di mahkamah rendah, Mahkamah Rayuan adalah pengadil yang terakhir di mana tiada lagi rayuan boleh dibuat ke Mahkamah Persekutuan. (Lihat s. 94 Akta Mahkamah Kehakiman 1964). Dalam kes semasa, Mahkamah Tinggi telah menggunakan budi bicara rayuannya dan tidak bidangkuasa asalnya. Oleh itu, berdasarkan perkataan-perkataan nyata statut, Mahkamah Persekutuan tiada bidangkuasa ke atas kes ini. Namun, defendan nampaknya masih cuba untuk menggerakkan mahkamah tersebut.

Case(s) referred to:
Clarke v. Edinburgh Tramways Co [1919] SC (HL) 35 ***(refd)***
Ryan v. Jarvis [2005] UKPC 27 ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 96

For the plaintiff/appellant - Nelson Cherian; M/s Shahriza Varegheese & Chandran
For the defendants/respondents - M Ravendran; M/s G Pereira & Assoc

[Appeal from High Court, Kuala Lumpur; Civil Suit No: R2-12-541-2000]

Reported by Usha Thiagarajah

JUDGMENT

Gopal Sri Ram JCA:

[1] This is a case of a road accident. The matter was tried by the sessions court which found for the plaintiff. It held the defendant to be solely to blame for the collision. The High Court reversed. It dismissed the plaintiff's claim. It did so on the ground that the sessions court had erred in its evaluation of the evidence. The plaintiff appealed to us. We allowed the appeal and restored the judgment of the sessions court. In cases of this sort we do not, as a general rule, produce written reasons for our decision. First, because these kinds of cases merely turn on an assessment of facts: they do not involve any novel or important principle of law. Second, because in matters that originate in a subordinate court, this court is the final arbiter and no further appeal lies to the Federal Court. That is provided for in s. 96 of the Courts of Judicature Act 1964 which, *inter alia*, states that an appeal shall lie to the Federal Court from "any judgment or order of the Court of Appeal in respect of any civil cause or matter decided by the High Court in the exercise of its original jurisdiction." Notice the words "exercise of its original jurisdiction". In the present instance, the High Court exercised its **appellate** and not its **original** jurisdiction. As such, on a reading of the plain words of the statute, the Federal Court has no jurisdiction over this case. Yet, the respondent before us appears to have moved that court.

[2] The main issue in this appeal is whether the High Court was correct in interfering with the sessions court's finding of pure fact based on evidential credibility. The plaintiff's case at first instance was that he was riding his motor cycle along Jalan Loke Yew. He was headed in the direction of Cheras. The defendant who was a taxi driver overtook the plaintiff and obstructed his path. Because of the suddenness of the defendant's movement of his vehicle, the plaintiff ran into the rear of the taxi and was injured. The defendant's version was that he was proceeding along Jalan Loke Yew when the plaintiff suddenly collided into the rear of the former's taxi. There were then two diametrically opposed versions presented to the sessions court. The sessions court preferred the plaintiff's version and found the defendant solely to blame for the collision. In doing so, the sessions court thought it likely that the defendant's taxi must have suddenly pulled up to pick up a passenger from the kerb and that must have accounted for the way in which the vehicle was driven. The judicial commissioner who reversed the sessions court took the view that as there was no evidence suggesting that there had been any person on the kerb reversed the sessions judge.

[3] Now, there was nothing improbable in the plaintiff's story when he said that the defendant taxi had overtaken him and obstructed his path. You will see that sort of thing happening everyday in Kuala Lumpur. It is a common occurrence in Kuala Lumpur for a taxi to suddenly pull up to the kerb for the purpose of either picking up a passenger or dropping one off. So the sessions court was clearly entitled to suggest that as a probable cause for the way in which the defendant's taxi behaved. This in no way flawed its judgment.

[4] The judicial commissioner does appear to have appreciated the role of an appellate court in a case such as this. That role was set out by *Clarke v. Edinburgh Tramways Co.* per Lord Shaw Dunfermline in [1919] SC (HL) 35, 36, where he said:

> When a judge hears and sees witnesses and makes a conclusion or inference with regard to what on balance is the weight of their evidence, that judgment is entitled to great respect, and that quite irrespective of whether the judge makes any observations with regard to credibility or not. I can of course quite understand a Court of Appeal that says that it will not interfere in a case in which the judge has announced as part of his judgment that he believes one set of witnesses, having seen them and heard them,

> and does not believe another. But that is not the ordinary case of a cause in a court of justice. In courts of justice in the ordinary case things are much more evenly divided; witnesses without any conscious bias towards a conclusion may have in their demeanour, in their manner, in their hesitation, in the nuance of their expressions, in even the turns of the eyelid, left an impression upon the man who saw and heard them which can never be reproduced in the printed page. What in such circumstances, thus psychologically put, is the duty of an appellate court? In my opinion, the duty of an appellate court in those circumstances is for each judge of it to put to himself, as I now do in this case, the question, Am I – who sit here without those advantages, sometimes broad and sometimes subtle, which are the privilege of the judge who heard and tried the case – in a position, not having those privileges, to come to a clear conclusion that the judge who had them was plainly wrong? If I cannot be satisfied in my own mind that the judge with those privileges was plainly wrong, then it appears to me to be my duty to defer to his judgment.

[5] More recently, *Ryan v. Jarvis* [2005] UKPC 27, an appeal from Antigua & Barbuda, Lord Hoffmann stated the appellate practice in this way:

> It is of course most unusual for an appellate tribunal to reverse a trial judge's findings on credibility on the ground that the evidence which he rejected has the ring of truth. The true or false note is generally more audible to the judge who hears and sees the witnesses than to the appellate court reading the record.

[6] So too here. The ring of truth or falsity in the evidence of the witnesses who gave evidence before the sessions court would have been more audible to that court than to the judicial commissioner who heard the intermediate appeal. Having concluded that the High Court had erred in interfering with the sessions court's findings, this court had no alternative but to allow the appeal and to restore the judgment entered at trial. Other consequential orders that usually follow a successful appeal were made.

[7] My learned brothers Suriyadi bin Halim Omar and Hasan bin Lah, JJCA have seen this judgment in draft and have expressed their agreement with it.